

***Plaintiffs' Motion to Compel Compliance with Subpoena
to Produce Documents***

EXHIBIT 25

From: Jennifer Dorminey Herzog jherzog@hallboothsmith.com
Subject: Subpoenas to Coffee County Board of Elections and Registration and Cheney - Curling v. Raffensperger
Date: July 26, 2022 at 4:16 PM

JH

To: Cross, David D. DCross@mofo.com, Bruce Brown bbrown@brucebrownlaw.com, Adam M. Sparks sparks@khlawfirm.com, Russ Abney rabney@wattsguerra.com, Halsey G. Knapp, Jr. hknapp@khlawfirm.com, Kaiser, Mary MKaiser@mofo.com, Conaway, Jenna B. JConaway@mofo.com, Robert McGuire ram@lawram.com, Daniella P. Stucchi daniella@khlawfirm.com, Marilyn Marks Marilyn@uscgg.org, Middleton, Caroline L. CMiddleton@mofo.com
Cc: Anthony A. Rowell ARowell@hallboothsmith.com, Nick Kinsley NKinsley@hallboothsmith.com, Stephen Delk SDelk@hallboothsmith.com

Good afternoon,

Please accept this correspondence as a global response to a number of emails received from both Curling and Coalition Plaintiffs' counsel over the last several days:

1. **Subpoena for Cheney and 30b6 to BOE (from Curling Plaintiffs):** I have spoken with Mr. Cheney and he and counsel will be available Friday August 12 or Monday August 15 in Coffee County, Georgia for his deposition. I am working on location but we are considering the use of the Chamber of Commerce or rooms at the Coffee County Courthouse and currently checking availability, conditional upon # of attendees expected. Although there are a number of topics in the original 30b6 subpoena received from Curling Plaintiffs to which I am told no Board member or staff can testify (which I will detail more fully to you in separate correspondence), Mr. Cheney will also be appearing as the 30b6 deponent for the Coffee County Board of Elections and Registration. Once we have agreed upon a date/time, I have authority to and will accept service of revised subpoenas. *[I have not received your response to initial requests sent on 7/12/22 - Can you give me an expected # of attendees and will/will there not be a virtual option? Respond all to the Cross Notice of Barnes depo for scheduling purposes to ensure all attorneys included or will you be handling communication with defense counsel, Earnestine Thomas' personal counsel, and Misty Hampton's counsel as applicable once date is provided?]*
2. **Subpoena for Production of Documents to BOE and to Cheney (from Curling Plaintiffs):** Based on the fact that we will not be re-producing documents previously produced to Ms. Marks in response to open records requests, I expect the document production as far as number of actual papers to be limited with regard to the original subpoena issued. Barring any unforeseen circumstances I am hopeful those will be able to be delivered to you electronically by the close of business on Monday August 1st, 2022. You are correct that it is my understanding that Coffee County has recently been able to recover the items on Misty Hampton's Coffee County issued phone. My intent if you are agreeable is to produce the documents provided to me with the information contained on the phone, redact any personal cell numbers while leaving names and the substance of all communications – and produce these records of the phone in their entirety to you. I understand from Mr. Delk that there was testimony from James Barnes' recent deposition that there was an "old gray laptop" in the elections' office – As I have communicated to Ms. Marks' previously, I was told there was no county issued laptop to the Board of Elections and Registration or its staff and have confirmed that fact again this morning. But in light of Mr. Barnes' testimony, I am doing my best to confirm the existence/location of any "old gray laptop" that is or was previously in the Coffee BOE office so that we can confirm accurately we have

provided everything responsive in Coffee County's possession. Please note:

- a. Members of the Board of Elections and Registration of Coffee County do not have county assigned email addresses, with the exception of Chairwoman Earnestine Clark who has been only recently assigned a county email address. Personal emails or text messages may or may not be located on individual board members private accounts. However, certain board members have joined and/or left the Board during the time period requested. I have requested that all current board members produce any Coffee County related responsive documents for the time period requested in their personal possession and will provide in response to the subpoenas, unless otherwise privileged.
 - b. IT support has confirmed that the former Election Supervisor Misty Hampton's email account is no longer accessible. I previously personally asked IT to again re-double their efforts to be absolutely sure this is the case and same was confirmed. (see further explanation in my original email at the bottom of this chain).
2. **Privilege Log:** We will provide a general privilege log with the formal response to the subpoena for production of documents that generally references the type of documents being withheld (it is my understanding that the only documents originally withheld potentially responsive to your subpoena were based upon attorney client privilege and/or attorney client work product – ie, communications between members of our office, communications between members of our office and our client, etc.).
4. **Subpoena for Production of Documents to BOE and 30b6 to BOE (Coalition Plaintiffs)** – Yesterday afternoon I received a request to accept service for a 30b6 subpoena and subpoena for production of documents to Coffee BOE from Coalition Plaintiffs containing 50 requests that will take a significant amount of time and effort to properly review and respond to. Friday afternoon I also received a request to accept service of a subpoena and production of documents to Cheney from Coalition Plaintiffs. Obviously these were not part of the original agreement and therefore we need to discuss timing for production of records and deposition (it makes sense to me to do them all at once and I am currently in the process of determining what records may be in existence responsive to these subpoenas – but practically they are significant in both length and scope and I want to be sure the board members and staff have time to review them carefully and respond in full. We may need to agree to produce all records 1 week prior to the depositions (instead of 2) to include these subpoenas in the previous agreement and still get the depositions conducted on the time line agreed upon, or push the depositions back a week or two.). Again, once we have agreed upon a date/time, I have authority to and will accept service of revised subpoenas.
5. **Is the Latham deposition going forward Thursday?** As previously stated, counsel for our office would like the opportunity to attend these Coffee County related depositions.
6. Will you please provide the attachments to your respective subpoenas in word version to me to ease burden of typing.

I trust this correspondence responds to all issues in the various emails sent, but if I have overlooked anything please advise. Thank you,

Jennifer

Jennifer Dorminey Herzog

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Logo



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From: Cross, David D. <DCross@mofo.com>

Sent: Monday, July 25, 2022 1:29 PM

To: Jennifer Dorminey Herzog <jherzog@hallboothsmith.com>

Cc: Bruce Brown <bbrown@brucebrownlaw.com>; Adam M. Sparks

<sparks@khlawfirm.com>; Russ Abney <rabney@wattsguerra.com>; Halsey G. Knapp, Jr. <hknapp@khlawfirm.com>; Kaiser, Mary <MKaiser@mofo.com>; Conaway, Jenna B. <JConaway@mofo.com>; Robert McGuire <ram@lawram.com>; Daniella P. Stucchi <daniella@khlawfirm.com>; brad@bradcollinslaw.com; Anthony A. Rowell <ARowell@hallboothsmith.com>; Nick Kinsley <NKinsley@hallboothsmith.com>; Stephen Delk <SDelk@hallboothsmith.com>; Marilyn Marks <Marilyn@uscgg.org>; Middleton, Caroline L. <CMiddleton@mofo.com>

Subject: RE: ORR and Subpoenas to Coffee County Board of Elections and Registration and Cheney - Curling v. Raffensperger

Thanks Jennifer. We're getting concerned on timing because we're down to 15 business days to complete the depositions and we're supposed to get the documents two weeks before the depositions. Want to be sure we can get everything done by the agreed deadline.

Best,
DC

From: Jennifer Dorminey Herzog <jherzog@hallboothsmith.com>

Date: Monday, Jul 25, 2022, 1:20 PM

To: Cross, David D. <DCross@mofo.com>

Cc: Bruce Brown <bbrown@brucepbrownlaw.com>, Adam M. Sparks <sparks@khlawfirm.com>, Russ Abney <rabney@wattsguerra.com>, Halsey G. Knapp, Jr. <hknapp@khlawfirm.com>, Kaiser, Mary <MKaiser@mofo.com>, Conaway, Jenna B. <JConaway@mofo.com>, Robert McGuire <ram@lawram.com>, Daniella P. Stucchi <daniella@khlawfirm.com>, brad@bradcollinslaw.com <brad@bradcollinslaw.com>, Anthony A. Rowell <ARowell@hallboothsmith.com>, Nick Kinsley <NKinsley@hallboothsmith.com>, Stephen Delk <SDelk@hallboothsmith.com>, Marilyn Marks <Marilyn@uscgg.org>

Subject: Re: ORR and Subpoenas to Coffee County Board of Elections and Registration and Cheney - Curling v. Raffensperger

I am tied up working out of town today but I expect to be able to respond to your and Bruce's emails tomorrow.

Sent from my iPhone

Jennifer Dorminey Herzog

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On Jul 23, 2022, at 3:30 PM, Cross, David D. <DCross@mofo.com> wrote:

Hi Jennifer -

I'm checking on timing for the document productions and deposition availability for the subpoenas you've received from plaintiffs. Per our agreement, we need to get all this done by August 15, and we are supposed to receive the documents at least a week or two in advance of the depositions (I can't recall if we agreed to one week or two weeks — I think your colleague may have said two weeks on the court call last week but I've not gone back to look at our written agreement to see if that's right). Given the other depositions we also have to schedule in the same window, we need to get the document productions completed soon and the depositions on the calendar. Can you please get back to us by the end of the day on Monday with the full availability for each of your clients for the first two weeks of August and a date certain by when each will complete their respective productions, which need to be completed this coming week?

Thanks. Enjoy the weekend.

DC

From: Bruce Brown <bbrown@brucepbrownlaw.com>
Date: Friday, Jul 22, 2022, 2:35 PM
To: Jennifer Dorminey Herzog <jherzog@hallboothsmith.com>, Adam M. Sparks <sparks@khlawfirm.com>, Russ Abney <rabney@wattsguerra.com>, Halsey G. Knapp, Jr. <hknapp@khlawfirm.com>, Cross, David D. <DCross@mofo.com>, Kaiser, Mary <MKaiser@mofo.com>, Conaway, Jenna B. <JConaway@mofo.com>, Robert McGuire <ram@lawram.com>, Daniella P. Stucchi <daniella@khlawfirm.com>, brad@bradcollinslaw.com <brad@bradcollinslaw.com>
Cc: Anthony A. Rowell <ARowell@hallboothsmith.com>, Nick Kinsley <NKinsley@hallboothsmith.com>, Stephen Delk <SDelk@hallboothsmith.com>, Marilyn Marks <Marilyn@USCGG.org>
Subject: ORR and Subpoenas to Coffee County Board of Elections and Registration and Cheney - Curling v. Raffensperger

External Email

Ms. Herzog,

Along with Russ Abney, I represent Coalition for Good Governance. There are a lot of moving pieces in this matter, but I did want to get back to you in response just to your paragraph 4 from your email below:

The Open Records Request and responses filed by Ms. Marks and CGG have been shared with Curling Plaintiffs and there is no need to reproduce those documents. However, it is our understanding that unspecified documents were withheld on the basis of attorney-client privilege but a privilege log was not provided. We would require the identification of specific records withheld and the basis of the asserted privilege.

Additionally, it is our understanding that the responses to the ORRs indicate that the email records of Ms. Hampton and Ms. Ridlehoover have not been preserved, but also, more recently that Ms. Hampton's county-issued cell phone can now be searched for relevant communications. Certainly our document subpoenas would cover such a device. It is not clear whether the ORR responses were based on a thorough search of computers used by Ms. Hampton in the conduct of her duties. We presume that a diligent search will be made of the hard drives and archives of the computers Ms. Hampton and Ms. Ridlehoover used, including a search for archived Outlook files. If Ms. Hampton or Board members have responsive records on their personal computers or other devices, we expect those records to be searched although they apparently were not searched in response to the ORRs. As well, we expect that all reasonable efforts will be made with respect to attempting to recover the relevant records from Microsoft.

If you have further questions, feel free to contact me (or Ms. Marks).

We greatly appreciate your assistance in this case and will be in touch on the other open matters.

Thanks and have a good weekend.

Bruce

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